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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,201	02/17/2004	Christopher A. Weinberg	WEIN0301	1754
24507	7590	11/13/2008		
MICHAEL BLAINE BROOKS, P.C. P.O. BOX 1630 SIMI VALLEY, CA 93062-1630			EXAMINER	
			SAYALA, CHIHAYA D	
ART UNIT		PAPER NUMBER		
		1794		
MAIL DATE		DELIVERY MODE		
11/13/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,201	<b>Applicant(s)</b> WEINBERG, CHRISTOPHER A.
	<b>Examiner</b> C. SAYALA	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 September 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1448)  
 Paper No(s)/Mail Date all dated 3/18/2008

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant claims "heating" an inner fill and then a second step, "extruding". Then the third step is "drying" the extrudate followed by yet another 'extrusion' step. Such steps could not be found in the specification. Applicant is urged to point out where these 4 steps can be found. What the specification discloses at Examples 1 and 2 is the mixture being extruded in a hot extrusion machine in which it is heated to 105 degrees C. The extrudate is then passed into an oven where it is dried at 85 degrees C. However, when applicant points out where in the specification the four steps as now claimed occurs, this rejection will be withdrawn.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tepper et al. (US Pub 2004/0126462) in view of Brown (US Patent 6886496), Kazamzadeh (US Patent 5773070) and Miller et al. (US Patent 3899607) and further in view of Sherrill (US Patent 5673653).

Tepper et al. teach a pet chew with an inner filling that is selected from vegetables, fruit, cereal, rice, etc. See claim 8. Note that Tepper does not exclude meat altogether, teaching that mixtures of meat/vegetables are also possible and it is also to be noted that the specification as well the instant claim do not exclude meat. Although Tepper teaches preparing the filling outside of the chew at paragraph [0073], the reference does not teach extruding the filling or drying the filling *outside* the chew.

Brown teaches a pet chew toy that also contains an inner filling that is a jerky that includes soy grits (see col. 4, line 65 to col. 5). At col. 5, line 29 on, the patentee teaches manufacturing the inner filling by cold extruding the product and then drying it in the oven at 170<sup>0</sup>F for 4-5 hours.

In the same vein, Kazamzadeh teaches preparing meat jerky for pets which includes a two-step extrusion process (col. 7, lines 45+) wherein the extrusion step is conducted at 175-250<sup>0</sup>F, followed by a subsequent extrusion step wherein the "venting of water and volatiles" occurs, which disclosure would imply steps of heating and drying. At col. 8, lines 1-11, the patent discloses that extrusion occurs at 150-250<sup>0</sup>F.

Miller et al. teach extruding a simulated bone from vegetable flours (col. 3, lines 25-35) and vegetable protein meals such as soybean meal. When mixed and extruded,

a temperature of 170-240<sup>0</sup>F is used, and for drying a temperature of less than 250<sup>0</sup>F is used to prevent browning or burning the ingredients.

It would have been obvious based on these patents to Brown, Kazamzadeh and Miller to use a two step extrusion process in order to heat and dry the composition for the filling for the chew. To adopt such a process to heat/cook and shape the filling by extrusion and then drying the filling would have been obvious based on these patents and to incorporate such steps in Tepper would have been obvious. The conditions for extruding are as given, however, to optimize within that range would be within the skill of the artisan based on the fact that one skilled in the art would know to use whatever conditions are necessary to achieve the product desired, this being the motivation to optimize within the ranges shown by prior art. Generally, as is well known in the art of pet foods, the composition for pet food is heated in the extruder, due to the increase of pressure and steam therein, this cooks the product which then exits from the die. The wet extrudate is then generally, dried. The patents applied here establish such steps.

Sherrill teaches wrapping the rawhide around the filling and then drying this "is any conventional manner". The patent teaches drying the wrapped product and drying it in the sun for approximately for 4-7 days. Based on this it would have been obvious to use temperatures enough to dry the product under ambient temperatures, so that the desired dryness is achieved.

***Response to Arguments***

Applicant's arguments filed 9/8/2008 have been fully considered but they are not persuasive.

Applicant states that the references applied in the last Office action do not show the steps of making the pet chew by showing the preparation of the inner filling as claimed and asserts that the now claimed invention finds support in the specification. However, the invention as now claimed was never presented before and therefore, required a new search. Applicant's arguments with respect to claim 20 have been considered but are moot in view of the new ground(s) of rejection, necessitated by presentation of a new claim.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1794**